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November 30, 2018

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BY HAND DELIVERY

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: MUR 7505

Dear Mr. Jordan:

On behalf of Beto for Texas and Gwendolyn Pulido, in her official capacity as Treasurer (collectively, "Respondents"), we submit this letter in response to the Complaint Respondents received on November 18, 2018 ("the Complaint").

The Complaint makes veiled, speculative allegations, without substantiation, that Respondents might have engaged in coordination with End Citizens United ("ECU"), an unauthorized political committee, with respect to an advertisement distributed by End Citizens United on Facebook.¹ But there is no factual basis for these allegations. The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") or Federal Election Commission ("FEC") regulations.² Unwarranted legal conclusions drawn from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation.³ Because the Complaint does not allege any facts showing that coordination took place, and indeed no other activity that would amount to coordination did take place, the Complaint fails to state any facts that, if true, would constitute a violation of the Act. The Commission should therefore dismiss the Complaint and close the file.

¹ Although the Complaint alleges that the advertisements in question were either independent expenditures or coordinated communications that amounted to in-kind contributions to Beto for Texas, this response addresses only the latter allegation, as the Complaint does not allege that Respondents would have violated the Act if the advertisements were independent expenditures.

² See, e.g., FEC Matter Under Review 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 1 (Dec. 21, 2000).

³ *Id.*

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A communication is a “coordinated communication” under 11 C.F.R. § 109.21 only if it satisfies the three prongs of the coordination standard, including one or more of the conduct standards set forth in 11 C.F.R. § 109.21(d). To be coordinated, an expenditure must be “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”⁴ This conduct prong can be satisfied if a candidate (1) requests or suggests a communication, (2) is materially involved in the making or distribution of a communication, or (3) engages in substantial discussions with a third-party spender regarding a communication.⁵ A communication can also satisfy the conduct prong if it republishes a candidate’s campaign materials, or if the communication is produced or distributed by a common vendor or former employee or contractor to a candidate.⁶

The Complaint fails to provide any facts showing that the conduct prong was satisfied. Indeed, the Complaint does not even cogently allege that the conduct prong was satisfied; it merely calls for an investigation to determine whether Respondents engaged in coordinating conduct without any factual basis. In particular, the Complaint does not allege that Respondents requested or suggested the advertisement in question; that they were materially involved in the advertisement’s creation or distribution; or that they were engaged in substantial discussions about the advertisement with End Citizens United. Nor does the Complaint allege or set forth any facts indicating that the advertisement republished campaign materials of Beto for Texas. Last, the Complaint does not set forth any evidence indicating that the Facebook advertisement was produced or distributed by a common vendor shared by End Citizens United and Beto for Texas or a former employee or contractor to Beto for Texas.

The allegations in the Complaint are wholly inadequate to assert a violation of the Act. In fact, the Complaint tacitly acknowledges that it does not contain a single fact that would satisfy the conduct prong; it says that because the advertisement “satisfies both the payment and content standards [], the Commission *should investigate* the conduct of [End Citizens United] to determine whether ECU’s interaction with Beto for Texas [] constitute a coordinated communication.” (emphasis added). Respectfully, this is not how the complaint review process works; there must be a factual and legal basis for the Commission to commence an investigation, and the facts alleged in the Complaint are clearly insufficient to warrant such an investigation. Because the Complaint fails to provide any facts showing that the Facebook advertisement was “made in cooperation, consultation or concert with, or at the request or suggestion of,” Beto for Texas or its agents, the Complaint fails as a matter of law.

⁴ 11 C.F.R. § 109.20(a).

⁵ *Id.* § 109.21(d).

⁶ *Id.*

